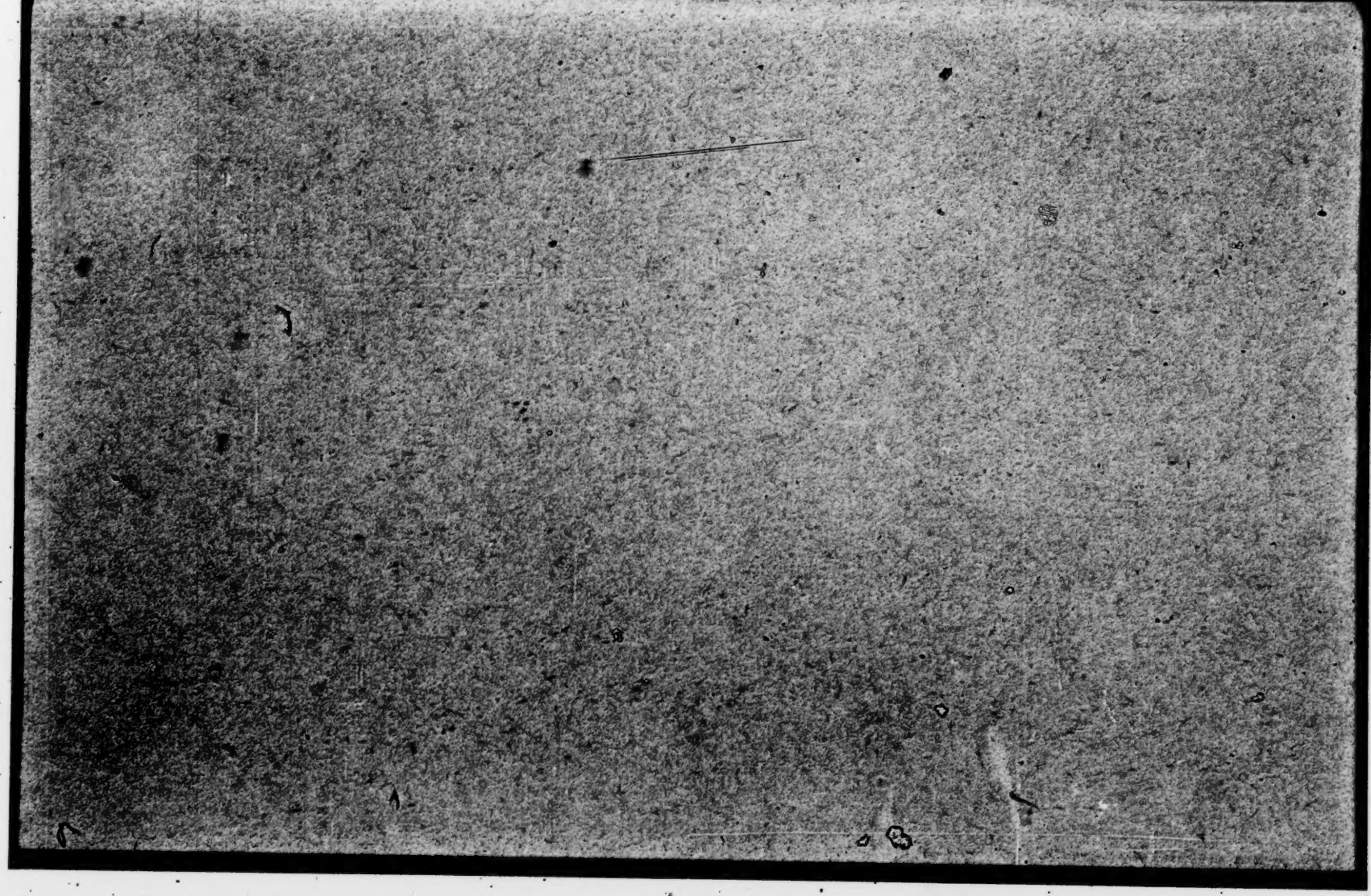

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 734

LEWIS REYNOLDS, PETITIONER,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

FRANCIS W. HILL, JR.,
Counsel for Petitioner.

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STATUTE CITED

Act of Dec. 7, 1923, Sec. 3 (a) 2
World War Veterans' Act (1924), Sec. 202 (10), as amended by Sec. 3 of the Act of July 3, 1930 (46 Stat. 990, 38 U.S.C. 1 Supp. Title 38, sec. 484) 2

TEXT BOOK CITED

Lewis, Sutherland Statutory Construction, p. 658, p. 1153 3

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Claims rendered by that Court against the petitioner on the 6th day of November, 1933.

Statement.

This case was tried before the Court of Claims which decided against the petitioner by a three to two decision, the Chief Justice and Judge Littleton dissenting. There is no dispute as to the facts. Petitioner is a veteran of the Spanish American War and the Philippine Insurrection; was honorably discharged from the service on January 25, 1907; was on June 6, 1911, found to be of unsound mind; was committed to St. Elizabeth's Hospital. (R., p. 6) and

there remained until April 25, 1930, when he was discharged (Rec., p. 7) and was thereafter judicially determined to be of sound mind (Rec., p. 10). Because of his army service, petitioner became entitled to, and was allowed, a pension which was paid to the Superintendent of said hospital during his commitment (Rec., pp. 6-7). This pension money, pursuant to law, was deposited by the Superintendent in the United States Treasury, subject to withdrawal by said Superintendent (Rec., p. 7). At the time of petitioner's discharge from St. Elizabeth's Hospital there had been credited on the books of said institution, under the certificate of the Bureau of Pensions, $4,036.00 representing pension money received by said hospital from the Bureau of Pensions on behalf of petitioner. Upon the petitioner's discharge, St. Elizabeth's Hospital deducted from said sum $776.83, which had been advanced to plaintiff for clothing and cash, and the balance or $3,259.17 on account of board (Rec., p. 7). The petitioner seeks to recover the sum of $3,259.17 which was deducted on account of his board.

Statute Involved

Section 202 (10) of the World War Veterans' Act, 1924, as amended by Section 9 of the Act of July 2, 1926 (44 Stat. 790, 796-797; U. S. C., Title 38, c. 10, Sec. 484):

> "That all hospital facilities under the control and jurisdiction of the bureau shall be available for every honorably discharged veteran of the Spanish American War, the Philippine insurrection, the Boxer rebellion, or the World War suffering from neuro-psychiatric or tubercular ailments and diseases, . . . regardless whether such ailments or diseases are due to military service or otherwise, including traveling expenses as granted to those receiving compensation and hospitalization under this Act. The director is further authorized, so far as he shall find that exist

ing Government facilities permit, to furnish hospitalization and necessary traveling expenses incident to hospitalization to veterans of any war, military occupation, or military expedition. * * * not dishonorably discharged, without regard to the nature or origin of their disabilities: * * * Provided, That preference to admission to any Government hospital for hospitalization under the provisions of this subdivision shall be given to those veterans who are financially unable to pay for hospitalization and their necessary traveling expenses: * * * And provided further, *That the pension of a veteran entitled to hospitalization under this subdivision shall not be subject to deduction, while such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization*: Provided further, That the Act of May 4, 1898, entitled 'An Act making appropriations for the naval service for the fiscal year ending June 30, 1899, and for other purposes', the Act of February 28, 1861, as amended by the Act of February 2, 1909, relative to the Government hospital for the insane in the District of Columbia, or any other Act, in so far as they are inconsistent with the provisions of this section be, and they are, hereby modified accordingly." (Italics supplied.)

Question Presented.

The question is: Had the Superintendent, in view of Section 202 (10), of the World War Veterans' Act, 1924, as amended by Section 9 of the Act of July 2, 1926, have the right to make this deduction of pension money on account of board?

Specification of Errors to be Urged.

The Court of Claims erred:

1. In holding that petitioner was not entitled to his pension money upon his discharge from St. Elizabeth's Hospital.

2. In holding that the superintendent of St. Elizabeth's Hospital was justified in arbitrarily deducting the pension money in payment for petitioner's board while he was confined at St. Elizabeth's Hospital.

Reasons for Granting the Writ.

1. The Court of Claims, by a three-to-two decision, has decided an important question of federal law in an untenable way.

2. The Court of Claims by a three to two decision has decided a question of substance relating to the construction or application of a statute of the United States directly in conflict with the decisions of this Court relating to construction of statutes.

3. The Court of Claims, in its three to two decision, did violence to the plain and unambiguous mandate of the applicable statute in this case.

Respectfully submitted,

FRANCIS W. HILL, JR.,
Counsel for Petitioner.

BRIEF IN SUPPORT OF THE PETITION.

The opinion of the Court is found in advance sheets of November 6, 1933, in the case of *Lewis Reynolds v. United States*, No. M-408.

Jurisdiction.

The jurisdiction of this court is invoked under Section 3 (b) of the Act of February 13, 1925.

Questions Presented, Statutes Involved, etc.

A statement of the questions presented, statute involved and specifications of error to be urged will be found in the Petition.

ARGUMENT.

The facts are undisputed and the Court of Claims made a special Finding of Facts.

Summarizing the facts, plaintiff, a citizen of the United States, served as an enlisted man in the Army from 1897 to 1907 under three enlistments, from each of which he was honorably discharged by reason of expiration of term of service. In 1911 he was found to be of unsound mind by the Supreme Court of the District of Columbia and thereafter committed to St. Elizabeth's Hospital (Rec., pp. 5-6), where he remained until 1930, when he was discharged therefrom (Rec., p. 7), and thereafter was adjudged by the same Court to be of sound mind (Rec., p. 10).

Because of his army service, plaintiff became entitled to, and was allowed, a pension which was paid to the Superintendent of St. Elizabeth's Hospital during his commitment at that institution (Rec., pp. 6-7). This pension money, pursuant to law, was deposited by the Superintendent in the United States Treasury, subject to withdrawal by said

Superintendent (Rec., p. 7). At the time of plaintiff's discharge, there was credited on the books of St. Elizabeth's Hospital to his account, $4,036.00, representing pension received by said Hospital from the Bureau of Pensions. Instead of this sum being turned over to him on his discharge, $776.83 was deducted therefrom on account of clothing and cash from time to time theretofore furnished plaintiff, with which deduction we have no dispute. In addition, however, the entire balance, namely, $3,259.17 was deducted and retained as payment for board furnished petitioner at St. Elizabeth's Hospital (Rec., p. 7); and it is this sum, deducted and retained over petitioner's protest, which is made the basis for this suit.

This deduction is in direct contravention of Section 202 (10) of the World War Veterans' Act, quoted in the petition, which provides that:

> "the pension of a veteran entitled to hospitalization under this section shall not be subject to deduction while such veteran is hospitalized in any Government hospital for board * * *"

This Act expressly repeals the earlier acts under which the Government derived authority for the retention of pension money for board. Petitioner was entitled to hospitalization under this Act, as a matter of right for the Act states that the hospital facilities:

> "shall be available for every honorably discharged veteran of the Spanish-American War, the Philippine insurrection, the Boxer Rebellion or the World War, suffering from neuro-psychiatric or tubercular ailments and diseases."

Petitioner was such a veteran and was suffering from such a disease (Rec., p. 7). He was therefore entitled to hospitalization and the Act provides "that the pension of

such a veteran shall not be subject to deduction" while in a Government hospital, and St. Elizabeth's is such a hospital. The Government contends that the matter of hospitalizing veterans is discretionary with the Director. This argument might be plausible with respect to general diseases for as to them the Act states:

> "The Director is further authorized, so far as he shall find that existing Government facilities permit, to furnish hospitalization * * *"

But as to neuro-psychiatric and tubercular patients, the Act states that the facilities "shall be available".

The words "shall be available" are mandatory—the petitioner, pursuant to the act, had the absolute right to hospitalization. See *Lewis Sutherland Statutory Construction*, p. 638,

> "Affirmative words which are imperative, and therefore mandatory, imply a negative of anything contrary or alternative to the direction so given."

The same author states at p. 1155:

> "The word 'shall' in its ordinary sense is imperative. When the word 'shall' is used in a statement, and a right or benefit to any one depends upon giving it an imperative construction, then that word is to be regarded as peremptory."

This is not in any sense a pension case—the pension was due and was paid—the sole question is the right of the St. Elizabeth's Hospital to retain the money paid to it for the petitioner. If the petitioner had been a tubercular patient and had requested hospitalization, the Director, under the law, had no discretion in that matter and the tubercular patient would have been entitled to hospitalization as a matter of right. This petitioner was of unsound mind dur-

ing his hospitalization and could not, therefore, make a legal request for hospitalization. He needed hospitalization as was found by the jury and he was actually hospitalized. To deny him the benefit of the Act simply because he did not make the request, which he could not legally do, is an arbitrary and unwarranted discrimination against a poor unfortunate lunatic.

Conclusion.

It is respectfully submitted that this case is one calling for the exercise of the supervisory powers of this Court.

Respectfully submitted,

FRANCIS W. HILL, JR.

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